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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
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		10/723,761	November 26, 2003
		First Named Inventor	
		John Gavin MacDonald	
		Art Unit	Examiner
		3761	Ginger T. Chapman
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number 45,675</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<p><input checked="" type="checkbox"/> *Total of 1 forms are submitted.</p>			

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**PATENT**  
**ATTORNEY DOCKET NO: KCX-1068 (19800)**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application: MacDonald et al.	)	Examiner: Ginger T. Chapman
	)	
Serial No: 10/723,761	)	Group Art Unit: 3761
	)	
Filed: November 26, 2003	)	Dep. Acct. No: 04-1403
	)	
Confirmation No: 9700	)	Customer No: 22827
	)	
Title: Odor Control Agents in Personal	)	
Care Products	)	

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Dear Sir:

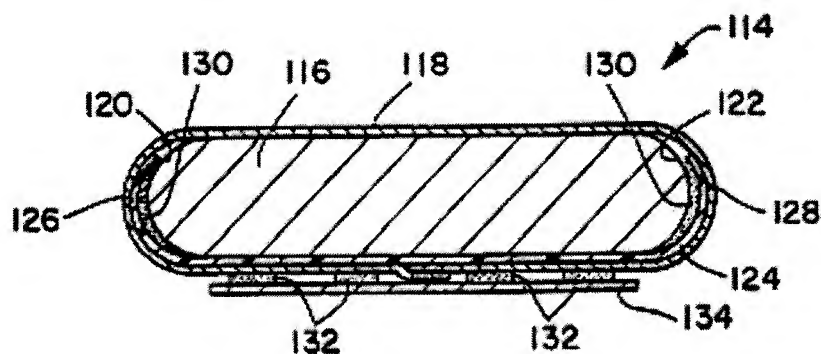
In conjunction with the filing of a Notice of Appeal, Applicants respectfully request review of the basis of the rejections of the pending claims of the above-captioned application. A Final Office Action dated December 4, 2007 has been issued.

Currently, claims 17-20 and 22-31, including independent claims 17 and 29, are pending in the present application. Independent claim 17, for example, is directed to a personal care product comprising a liquid impervious baffle, a liquid pervious liner, an absorbent core positioned between the baffle and the liner, and an odor sorbent substrate. The substrate is coated with a durable activated carbon ink that consists essentially of activated carbon particles and a binder.

Independent claim 17 was rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 3,939,838 to Fujinami, et al. in view of EP348978 to Tanzer, et al.

Fujinami, et al. is directed to an article that includes a material for deodorizing menstrual fluid. As correctly noted by the Examiner, however, Fujinami, et al. fails to disclose certain aspects of independent claim 17, including an odor sorbent substrate wrapped around an absorbent core.

Nevertheless, Tanzer, et al. was combined with Fujinami, et al. in an attempt to render obvious independent claim 17. Specifically, the Office Action asserted that the limitation of an odor sorbent substrate wrapped around an absorbent core was disclosed in Figs. 11 and 12 of Tanzer, et al. Fig. 11, for instance, is re-produced below.



**FIG. 11**

As shown, Fig. 11 illustrates an absorbent article 114 that contains an absorbent 116, a baffle 124 and a fluid-permeable cover 118. The Office Action asserts that the “deodorizing mixture 130” is “coated” onto a substrate that is wrapped around the absorbent 116 and positioned between the baffle 124 and absorbent 116, such as required by independent claim 17.

Contrary to the assertions in the Office Action, however, the deodorizing mixture 130 of Tanzer, et al. is *not* coated onto an odor sorbent substrate that is wrapped

around the core and positioned between the baffle and the core. Instead, the deodorizing mixture 130 is only positioned in “the cavities or spaces” between surfaces of the core and baffle. As would readily be understood by one of ordinary skill in the art, particles that are simply positioned between the “spaces” of two materials are not “coated” onto a substrate as required by claim 17. Nevertheless, to the extent that this mixture 130 is coated onto anything, it is simply “coated” onto the absorbent 116 – not a ***separate odor sorbent substrate that is wrapped around the absorbent 116***, such as required by independent claim 17.

In any event, Tanzer, et al. differs in several other respects from independent claim 17. For example, the particle mixture of Tanzer, et al. specifically requires “basic particles” as a substantial component of the deodorizing mixture. The “consisting essentially of” language of independent claim 17 excludes such a substantial presence of basic particles from the claimed activated carbon ink. Although recognizing this deficiency, the Examiner nevertheless asserted that it would have been obvious to remove the basic particles from the anhydrous mixture of Tanzer, et al. Applicants respectfully disagree. Tanzer, et al. employs the basic particles in an amount between 25 wt.% and 99 wt.% of the deodorizing mixture. The reason that Tanzer, et al. requires such a high percentage of basic particles stems from one of its primary purposes – *to control both acidic and neutral odors*. If such a substantial particle component were removed from the deodorizing mixture of Tanzer, et al., however, this purpose would be completely vitiated.

The Office Action responds to this argument by noting that Fujinami, et al. is relied upon for the “ink”, and that Applicants “cannot attack one reference but rather

must address the combination of references.” Applicants respectfully note, however, that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. See M.P.E.P. § 2143.03(VI).

Applicants emphasize that the issue in conducting an analysis under 35 U.S.C. § 103(a) is not whether a theoretical re-design of a device is *possible* or that it might be *obvious to try* the modification. Instead, the issue hinges on whether the claimed invention *as a whole* would have been obvious. In this case, the Office Action parsed and dissected only certain portions of the references, and then used these dissected portions in a way that would require a substantial reconstruction of the references. Clearly, the Office Action is using the present application as a “blueprint” for selectively re-designing the reference, which is improper under 35 U.S.C. § 103. Thus, for at least the reasons set forth above, Applicants respectfully submit that one of ordinary skill in the art would not have found it obvious to modify the references in the manner suggested in the Office Action.

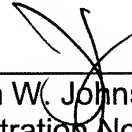
It is believed that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Examiner Chapman is invited and encouraged to telephone the undersigned, however, should any issues remain after consideration of this request.

Please charge any additional fees required by this request to Deposit Account No. 04-1403.

Appl. No. 10/723,761  
Pre-Appeal Request dated Mar. 5, 2007  
Reply to Office Action of Dec. 4, 2006

Respectfully requested,

DORITY & MANNING, P.A.



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